BILL NO. S-80-04-10

SPECIAL ORDINANCE NO. S-44-80

AN ORDINANCE approving an Agreement with M & G Properties, for construction of a sanitary sewer, for Baer Field West.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Agreement dated April 2, 1980, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and M & G Properties, a general partnership, consisting of Harley Graham and Tom Martin, for:

SANITARY SEWER

Beginning at an existing manhole located 2200± LF North of and 25± LF West of the intersection of Thirteenth Street and Ferguson Road; thence meandering southwesterly 2245± LF to a proposed manhole located 10± LF West of the East right-of-way line of Indianapolis Road; thence southwesterly parallel to said Indianapolis Road 2555± LF to a proposed manhole located 65± LF North of and 95± LF West of the intersection of Indianapolis Road and Ferguson Road; thence southwesterly 400± LF to a proposed manhole located 315± LF South of the intersection of Keller Road and Indianapolis Road; thence southerly along Keller Road 800± LF terminating at a proposed manhole located 40± LF South of and 15± LF West of the intersection of Keller Road and West Perimeter Road.

of which the developer shall pay $20,000 and City Utilities $201,108 for the construction of said sewer, all as more particularly set forth in said agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Councilman

APPROVED AS TO FORM AND LEGALITY April 3, 1980.

John E. Hoffman

JOHN E. HOFFMAN
City Attorney

Read the first time in full and on motion by Burns, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for ~~recommendation~~) and Public Hearing to be held after due legal notice, ~~at the Council Chambers, City-County Building~~, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock ___ M.,E.S.T.

DATE: 4/8/80

CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Eisbart, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES					
BURNS	X				
EISBART	X				
GiaQUINTA				X	
NUCKOLS	X				
SCHMIDT, D.	X				
SCHMIDT, V.	X				
SCHOMBURG	X				
STIER	X				
TALARICO	X				

DATE: 4/22/80

CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. S-44-80

on the 22nd day of April, 1980.

ATTEST: (SEAL)

CHARLES W. WESTERMAN - CITY CLERK

Vivian G. Schmidt
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 23rd day of April, 1980, at the hour of 11:30 o'clock A M.,E.S.T.

CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 23rd day of April 1980, at the hour of 3 o'clock P M.,E.S.T.

WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-80-04-10

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS REFERRED AN ORDINANCE approving an Agreement with M & G Properties, for construction of a sanitary sewer, for Baer Field West

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE PASS.

PAUL M. BURNS, CHAIRMAN

BEN EISBART, VICE CHAIRMAN

JOHN NUCKOLS

MARK GiaQUINTA

ROY SCHOMBURG

4-22-80
DATE

CONCURRED IN
CHARLES W. WESTERMAN, CITY CLERK

Memorandum

To BOARD OF PUBLIC WORKS Date April 2, 1980

From PHILIP R. BOLLER

Subject BAER FIELD WEST SANITARY SEWER EXTENSION

COPIES TO:

Attached for your review and approval is subject agreement. Per this agreement, the City will be providing $201,308.00 of the project construction cost of $221,300.00 for required oversizing. In addition the City will provide $7,800.00 for consultant engineering and 100% of the required construction inspection. The remaining $20,000 for construction to be provided by M & G Enterprises, is the equivalent cost of its required lift station force main system as established by competitive bids.

We recommend that this agreement be executed.

Very truly yours,

Philip R. Boller, P.E.
Chief Water Pollution Control Engineer

PRB/BS/ds

Attachment

BOARD OF PUBLIC WORKS
APR 2 1980

Council 4/8/80

A G R E E M E N T

F O R

S E W E R E X T E N S I O N

THIS AGREEMENT, made in triplicate this 2nd day of April 1980, by and between M & G Properties, a general partnership, consisting of Harley Graham and Tom Martin, hereinafter referred to as "DEVELOPER", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "CITY",

WITNESSETH:

WHEREAS, the DEVELOPER desires to construct a sanitary sewer described as follows:

Beginning at an existing manhole located 2200± LF North of and 25± LF West of the intersection of Thirteenth Street and Ferguson Road; thence meandering southwesterly 2245± LF to a proposed manhole located 10± LF West of the East right-of-way line of Indianapolis Road; thence southwesterly parallel to said Indianapolis Road 2555± LF to a proposed manhole located 65± LF North of and 95± LF West of the intersection of Indianapolis Road and Ferguson Road; thence southwesterly 400± LF to a proposed manhole located 315± LF South of the intersection of Keller Road and Indianapolis Road; thence southerly along Keller Road 800± LF terminating at a proposed manhole located 40± LF South of and 15± LF West of the intersection of Keller Road and West Perimeter Road.

Said sewer shall be 12" and 15" in diameter in accordance with plans, specifications and profiles heretofore submitted to the CITY and now on file in the office of the Chief Engineer of the Water Pollution Control Utilities of the CITY and known as Baer Field, West Sanitary Sewer which plans, specifications, profiles are by reference incorporated herein and made a part hereof, and

WHEREAS, the cost of construction of said sewer is represented to be $229,108 (composed of $221,308 for construction costs; and $7800 for engineering services).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The DEVELOPER shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the CITY under private contract to be let within sixty (60) days after requisite CITY approval. All work and materials shall be subject to inspection by CITY and the right of CITY to halt construction if there shall be noncompliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of CITY until final acceptance by CITY. Upon completion, said sewer shall become the property of CITY and CITY shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by CITY, and all further maintenance thereafter shall be borne by CITY.

2. COST OF CONSTRUCTION

The total cost of construction shall be divided as follows:

	CITY	DEVELOPER	TOTAL
a. Construction	$201,308.00	$20,000.00	$221,308.00
b. Engineering	$ 7,800.00 (100%)		$ 7,800.00
c. Construction inspection	100%		

It is agreed that DEVELOPER will pay its contractor the total amount for items a and b. As construction progresses to 25%, 50% and 75% complete DEVELOPER may invoice CITY by the ratio of $201,308/$221,308 = (90.1%) of construction completed per item a. DEVELOPER may invoice CITY for item b at any time after the tap extensions are installed. The final 25% shall be paid by the CITY upon acceptance by the CITY of the sanitary sewer described above. It is also understood that the City may recoup its above described investments by executing an appropriate Resolution, with developer's area excluded.

The above construction costs were determined from the low bid received by DEVELOPER at 9:05 A.M., November 26, 1979. The $20,000.00 contribution by the DEVELOPER represents his cost of construction for a lift station and force main system which would serve only the area of the developer.

3. AREA OF DEVELOPER

Said sewer when accepted by the CITY will serve the following described real estate:

A parcel of land located in the Northwest One-Quarter of Section 8, Township 29 North, Range 12 East, Allen County, Indiana, and more particularly described as follows, to-wit: Commencing at the Northeast corner of the Northwest One-Quarter of Section 8, Township 29 North, Range 12 East, Allen County, Indiana; thence

South along the East line of said Northwest One-Quarter a distance of 1102.2 feet to the point of Beginning. Beginning at the above described point; thence continuing South along said East line of said Northwest One-Quarter a distance of 215.0 feet to a point; thence by a deflection right of 91°-44' a distance of 350.16 feet to a point; thence by a deflection right of 88°-16' a distance of 204.42 feet to a point; thence by a deflection right of 90°-00' a distance of 350.0 feet to the point of Beginning, containing 1.68 acres of land, more or less and subject to a public roadway (Keller Road) over the East portion thereof.

As the DEVELOPER will pay for his pro rata share of the cost of construction of said sewer as specified in paragraph 2 for the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the CITY for connections to CITY sewer mains and treatment of sewage therefrom.

4. BOND

This contract is subject to DEVELOPER furnishing a satisfactory Performance and Guaranty Bond for the value of the sewer which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the CITY.

5. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

6. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The DEVELOPER, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by CITY of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof. Pursuant to Burns Indiana Statutes Anno. I.C. 19-2-7-16, 17 and 18.

In further consideration and to induce CITY to execute and ratify this contract, said DEVELOPER, for himself, his successors and assigns, agrees by this contract to vest in CITY the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

DEVELOPER further agrees that any deeds, contracts, or other instruments of conveyance made by the DEVELOPER, its successors or assigns transferring or conveying any interest in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article which provisions shall run with the land and the acceptance of the delivery of any such instruments from the DEVELOPER, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser, and their successors in title.

The DEVEOPER further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of CITY who connect into the sewer constructed hereunder shall be deemed to thereby waive his, her, their, or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by CITY of such land or of the territory in which it is located or of the area served by said sewer.

7. GOVERNING STATUTE

It is the intention of the parties hereto to utilize and take advantage of and apply to this Agreement the provisions of Sections 16, 17, and 18 of Chapter 128 of the Acts of 1967 of the State of Indiana (Refer to I.C. 19-2-7-16, 17 and 18), the provisions of which Sections shall govern with respect to any matters not specifically outlined herein.

8. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly appointed Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the parties have subscribed to this Agreement the day and year first above written.

DEVELOPER: ~~M & G~~ Properties

BY: Tom Martin
Tom Martin, Partner

BY: Harley Graham
Harley Graham, Partner

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Tom Martin and Harley Graham as the co-partners of M & G Properties, who acknowledge the execution of the foregoing agreement for sewer extension, as and for its voluntary act and deed for the uses and purposes therein contained.

Witness my hand and notarial seal this 1st day of April, 1980.

Charles I. Wickensheimer
Charles I. Wickensheimer, Notary Public
Resident of Allen County

My commission expires
30th October 1982

CITY OF FORT WAYNE, INDIANA

BY: _____
Win Moses, Jr., Mayor

BOARD OF PUBLIC WORKS

BY: _____
Mark L. Akers, Chairman

BY: _____
Roberta Anderson-Staten, Member

BY: _____
Herbert R. Gamache, Member

ATTEST:

Sandra E. Kennedy
Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Assoc. City Attorney

STATE OF INDIANA:
SS
COUNTY OF ALLEN:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Winfield Moses, Jr., Mark L. Akers, Roberta Anderson-Staten, and Herbert R. Gamache, known to me to be the Mayor and the members of the Board of Public Works, respectively, all of the City of Fort Wayne, Indiana, who acknowledged the execution of the foregoing agreement for sewer extension, as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this ____ day of _____, 19__.

_____
Notary Public
Resident of _____ County

My Commission Expires:

_____

This instrument prepared by
P. R. Boller, P.E.
Chief Water Pollution Control Engineer

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR SEWER EXT. - BAER FIELD WEST SAN. SEWER

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-80-04-10

SYNOPSIS OF ORDINANCE AGREEMENT FOR SEWER EXTENSION FOR BAER FIELD WEST, INCLUDING THIRTEENTH STREET, FERGUSON ROAD, INDIANAPOLIS ROAD AND KELLER ROAD AREA AND WEST PERIMETER ROAD AREA, M & G PROPERTIES, A GENERAL PARTNERSHIP, CONSISTING OF HARLEY GRAHAM AND TOM MARTIN, DEVELOPER FOR THE PROJECT.

(AGREEMENT ATTACHED)

EFFECT OF PASSAGE SANITARY SEWER TO SERVE THE ABOVE-DESCRIBED AREA

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) $201,308.00 FOR CONSTRUCTION AND $7800.00 FOR ENGINEERING ALL OUT OF CITY UTILITIES

ASSIGNED TO COMMITTEE